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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/646,603	08/22/2003	Rodger Graham	03-12265	9804
25189	7590 05/26/2004		EXAMINER	
	HOMAS, LLP		LUGO, C	CARLOS
233 WILSHI SUITE 900	RE BLVD		ART UNIT	PAPER NUMBER
SANTA MONICA, CA 90401-1211			3676	

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.   Applicant(s)   GRAHAM ET AL   Examiner   Carlos Lugo   Sa76   The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply   A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM   THE MAILING DATE OF THIS COMMUNICATION.   Caterious of prime rup to available and the previous or 3 CYCR 1.136(a). In no event, however, may a rapty be timely filled   1 the priod for reply application cover be maximum landor period via period will only willing the state of the provides or the prime the provides and strength of the prime to the transfer of the prime and via origin 5% (Quity set III be considered timely, 1 the priod for reply application does not be the maximum landor period via application, and of this good says will be considered timely, 1 the priod for reply application of the prime adjustment. Set 37 CFR 1.704(b).   Status   1) N Responsive to communication(s) filled on 22 August 2003.   23) N This action is FINAL   20)   This action is non-final.   3)   Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.   Disposition of Claims   4) Claim(s) 20-23 is/are pending in the application.   4a) Of the above claim(s)   is/are allowed.   is/are withdrawn from consideration.   5)   Claim(s)   is/are allowed.   is/are withdrawn from consideration.   6)   Claim(s)   is/are allowed.   is/are withdrawn from consideration.   7)   Claim(s)   is/are objected to by the Examiner.   7)   The drawing(s) filed on 22 August 2003 is/are: a)   accepted or b)   objected to by the Examiner.   7)   The drawing(s) filed on 22 August 2003 is/are: a)   accepted or b)   objected to by the Examiner.   8)   The drawing(s) filed on 22 August 2003 is/are: a)   accepted or b)   objected to by the Examiner.   10)   The drawing(s) filed on 22 August 2003 is/are: a)   accepted or b)   objected to by the Examine				Sua
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### **DETAILED ACTION**

## Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 20-23 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5,9-12,18,20 and 22-27 of U.S. Patent No. 6,668,602. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 21 of the current application claims a latch assembly comprising a latch housing having first and second chambers and a recessed portion; a retainer unit partially housed in the first chamber; a handle pivotally connected to the retainer unit and housed at least partially inside the recessed potion when is pivoted to a closed position; a push button unit intermediate between the second chamber and the handle; one or more retention members intermediate the push button unit and the handle in the closed position; an engagement surface intermediate the push button unit and the handle and engaged with the retention member when the handle is in the closed position; and a compression spring housed in the second chamber to bias the push button unit in an upward direction. These limitations can be found in claims 1,2,9,18,20,23 and 24 of US Pat No 6,668,602.

Claim 20 of the current application claims that the one or more retainer members are depressible. This limitation can be found in claims 1,10,20 and 25 of US Pat No 6,668,602.

Claim 22 of the current application claims that a key operates the push button unit. This limitation can be found in claims 4,12 and 27 of US Pat No 6,668,602.

Claim 23 of the current application claims that the torsion spring is located between the retainer unit and the handle for urging the handle in an upward direction. This limitation can be found in claims 2,13 and 28 of US Pat No 6,668,602.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United

States.

1. Claims 21 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by US

Pat No 5,469,725 to Yamada (Yamada '725).

Regarding claim 21, Yamada ('725) discloses a latch assembly. The assembly

comprises a latch housing (1) having a first and second chambers (2 and 3

respectively) and a recessed portion between the two chambers.

A retainer unit (11) is at least partially housed in the first chamber.

A handle (18) is pivotally connected to the retainer unit and housed at least

partially inside the recessed potion when is pivoted to a closed position.

A push button unit (30) is intermediate between the second chamber and the

handle.

One or more retention members (34) intermediate the push button unit and the

handle in the closed position.

An engagement surface (20) intermediate the push button unit and the handle

and engaged with the retention member when the handle is in the closed position.

A compression spring (40) is housed in the second chamber to bias the push

button unit in an upward direction.

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As to claim 23, Yamada ('725) discloses that a torsion spring (38) is located between the retainer unit and the handle for urging the handle in an upward direction.

5. Claims 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat No 5,638,709 to Clavin.

Regarding claim 21, Clavin discloses a latch assembly. The assembly comprises a latch housing (11) having a first and second chambers (at 17 and where 40 is located) and a recessed portion between the two chambers.

A retainer unit (13) is at least partially housed in the first chamber.

A handle (12) is pivotally connected to the retainer unit and housed at least partially inside the recessed potion when is pivoted to a closed position.

A push button unit (40) is intermediate between the second chamber and the handle.

At least one or more retention members (54) intermediate the push button unit and the handle in the closed position.

An engagement surface (55) intermediate the push button unit and the handle and engaged with the retention member when the handle is in the closed position.

A compression spring (42) is housed in the second chamber to bias the push button unit in an upward direction.

As to claim 22, Clavin discloses that the push button unit is operated with key.

As to claim 23, Clavin discloses that a torsion spring (34) is located between the retainer unit and the handle for urging the handle in an upward direction.

## Response to Arguments

Applicant's arguments filed on August 22, 2003 have been fully considered but they are not persuasive.

Regarding applicant's arguments that Clavin fails to disclose a housing having first and second chambers and a recessed portion (Page 5 Line 19), clearly, Clavin illustrates these limitations. As seen in Figures 2 and 3, the first chamber is located between the recesses 17 (Figure 2) and the second chamber is located where the push button unit 40 is located (Figure 3). The recessed portion is defined by the surface above elements 31 (Figure 3). Therefore, Clavin disclose these limitations.

As to applicant's arguments that Clavin fails to disclose that the push button unit is intermediate between the second chamber and the handle (Page 6 Line 3), Clavin disclose this limitation. The applicant by saying "the push button unit is intermediate between the second chamber and the handle" does not necessarily means that the push button unit is part of the handle. As seen on Figure 3, the push button unit 40 is intermediate between the second chamber (the side where 11 is pointing) and the handle (at 55), in other words, the push button is between the second chamber and the handle.

As to applicant 's arguments that Clavin fails to disclose that the push button unit may be rotated (Page 6 Line 9), the applicant is not positively reciting that the push button unit rotates, the applicant just claim that <u>may</u> rotate, "may rotate" and "rotate" are two different things.

Regarding applicant's comment that Yamada is not believed to anticipate the claims, it should be noted that such comment fails to satisfy the requirements of 37 CFR 1.111 and therefore is insufficient and unpersuasive.

#### Conclusion

7. This is a continuation of applicant's earlier Application No. 10/037750, now US Pat No 6,668,602. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, THIS ACTION IS MADE FINAL even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

 Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number is 703-305-9747. The examiner can normally be reached on 9-6pm EST. Application/Control Number: 10/646,603

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Stodola can be reached on 703-308-2686. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

Carlos Lugo AU 3676

May 13, 2004.

DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Daniel P Stodola